



# NATIONAL TEACHERS' UNION

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## **ADDITIONAL ANNEXURE 1B: NATU'S VIEWS ON THE MINISTERIAL TASK TEAM'S REPORT ON THE SELLING OF EDUCATOR POSTS BY SOME TEACHER UNIONS AND DEPARTMENTAL OFFICIALS IN THE VARIOUS PROVINCIAL EDUCATION DEPARTMENTS**

### **PREAMBLE**

The National Teachers Union (NATU) appreciates the courtesy afforded her leadership to preview the final draft of the Ministerial Task Team (MTT) on the very serious allegations of selling educator posts. We have studied the report and have a number of serious reservations about the methodology and process followed – and, hence, its contents. Nonetheless, we shall, hereunder, confine ourselves to only a few of these.

### **TERMS OF REFERENCE**

Typically, a report of this nature starts by setting out its terms of reference as mandated by the appointing body. We find it unusual that this has not been done in respect of this task team report.

### **ACKNOWLEDGEMENT OF NATU IN THE REPORT**

We have noted that the MTT report does not acknowledge NATU as one of the organisations that participated and contributed to its work when, in fact, we had generously given of our time to meet with the task team on the 4<sup>th</sup> November 2014, at Coastland Hotel, Umhlanga. It is, therefore, misleading to members of the general public and other stakeholders in Education to have stated that we neither participated nor supported the work of the task team. Furthermore, it is a contradiction in both terms and essence to report, as has been reported at 2.16 of

the MTT report, that the “National Association of Teachers Union (NATU) met with MTT but refused to participate in the investigation.” The impression given by this statement is that we just popped up in the venue where the business of the task team was taking place, informed the task team members that we were boycotting them, and then left. As will be seen below, there is nothing further from the truth. In any case, how would we have refused to participate, and then hold a meeting with the same body that we had decided not to cooperate with? The MTT’s statement is therefore simply ludicrous.

For NATU, it was an honour and privilege to have interacted with the MTT members under the leadership of Professor John Volmink, for the sole purpose of making vital inputs into the work of the task team. It was for this reason that NATU was duly represented at the meeting by none other than its President, Mr. S.L. Ngcobo, and the NATU Executive Director, Mr. S.A. Thompson. It is, therefore, unfortunate that the MTT decided not to acknowledge the contributions that we made at that meeting and, instead, conveniently chose to paint an appalling image of the Union as one that did not want to participate or support the work of the MTT in any way. It is sad and very mischievous of the MTT to simply brush aside all the critical issues that NATU raised during our engagements with them. We therefore want to place it on record that at no stage did NATU refuse to participate in the investigation. We wonder what the motive of the MTT was for this deliberate act of misinformation. Is it possible that this was deliberately done so as to hide the whole range of critical **process** and **methodological issues** which we raised in that meeting – including the credibility of some members of the MTT, whom we saw as being potentially conflicted as a result of their many years of association and patronage with one of the teacher unions? Anyhow, we shall come back to some of these issues later in this submission.

## **THE NAME OF THE UNION**

By referring us, at 2.16 of the MTT report, as the “National Association of Teachers Union (NATU)”, the report has involved itself in name-calling. As a teacher union that has been on the Education landscape in this country for a very long time, the

MTT ought to have known our correct name. For the record, the acronym NATU stands for the “National Teachers’ Union”.

## **METHODOLOGY AND PROCESS ISSUES**

It is sad to note that the only thing that the MTT reported about NATU was our so-called refusal to participate in the investigation. As already pointed out, the fact of the matter was that NATU was more than prepared and willing to participate in the work of the MTT. It was for this reason that we attended the meeting of November 4, 2014 and put across a number of very important **process** and **methodological issues** for the consideration of the task team. These issues were of such importance that the credibility and integrity of the work of the task team would have been greatly enhanced had they been accepted and taken on board. Indeed, in such matters as these, the processes and methodological issues are much more important than the outcomes. Appropriate processes and methodologies validate the outcomes of any investigation. When processes and methodologies are found to be wanting, inappropriate or inadequate the outcomes are doubted and cannot be relied upon. As things stand now, it is very difficult for NATU to find much trustworthiness, credibility and sincerely in the findings contained in the MTT report. Certainly, in our view, this report does not carry the comprehensiveness, depth and scope that were anticipated. Some of the reasons for this are presented below.

### **Conflict of Interest**

With regard to the composition of the MTT, NATU raised the issue of a possible conflict of interest in respect of some of its members. Clearly, some members of the task team were seriously conflicted by the roles they played in the teacher union movements, for a very long time, before their appointment to the National Department of Basic Education – and, subsequently, to the MTT. For this reason, NATU was further worried about the location of the secretariat that was to serve and service the MTT being based in the Department of Education, which was part of the entities to be investigated.

## **Maximising Participation**

One of the issues NATU raised with the MTT related to ways to maximise the participation of the affected people whom the investigation sought to reach, or ought to have targeted. In this regard, NATU requested the MTT to put certain systems in place to ensure maximum participation. At our afore-referenced meeting with the MTT, we offered them some advice on how to widen participation in their investigation. We pointed out that the methods the MTT was using to investigate the very serious allegations of selling of posts were both grossly inadequate and ineffective. In particular, we observed that the task team was operating silently and under such a veil of secrecy (and at such breakneck speed) that some people who could have contributed to the investigation were not even aware that the investigation had started. Accordingly, we advised the MTT to afford teachers and the general public at large a reasonable opportunity to provide input into the process, particularly in view of the broad range of vested interests in the matter under investigation. In this regard, NATU indicated that there was a clear need for individual teachers and members of civil society to give evidence and participate in the process as a whole to ensure that diverse opinions were heard and that the public interest was sufficiently harnessed and properly managed. We warned the MTT that failure to provide such time and space to the public would contribute to the climate of impunity on the part of the perpetrators of these evil practices. NATU further stressed the point that the ultimate ability to investigate and subsequently prosecute the perpetrators of the alleged malpractices would be severely jeopardised if there was limited participation. Thus, NATU advised the MTT that there should be an effort to inform all the schools about the investigation – and that one effective way to do this was for the task team to issue circulars to schools inviting all with the relevant information about the allegations to come forward and avail it to the task team. Further, we advised that, in the same circulars, the MTT should explain where, when and how the task team could be reached in the specific province or district of the Education department. It was our very strong view that if schools were not informed directly about the work of the task team by way of issuing a circular, the task team would have serious challenges reaching its target population and securing the cooperation of victims and witnesses. As such, this

would lead to a paucity of the necessary important information and evidence about the criminal matters under investigation.

Reading the MTT report, it is very clear that only a handful of teachers or people lodged official complaints regarding criminal activities committed against them or their colleagues. NATU attributes this poor response rate to the lack of information and transparency about the operations of the task team and perhaps a lack of confidence in it as well – either due to its composition or its closed and secretive *modus operandi*. Of the few cases reported where complaints were lodged, very few or no witnesses or evidence came forth and this was well anticipated by NATU, as borne out by the advice we gave to the MTT; advice which appears to have been dismissed off hand by the task team.

Overall, the report shows that there was no plan to invite individual teachers, save for a fortunate and well-connected few individuals who were able to find their way to the venues where the MTT held their hearings. Thus, the challenge of locating the task team for the purpose of giving evidence remained largely an elusive undertaking throughout the work-time of the task team. Some teachers continually enquired with our office about where the MTT interviewed were being held and, for the most part, we too were in the dark. In the end, the majority of teachers never had the necessary information about the investigation.

On the other hand, the MTT had enough time and presence of mind to consciously invite people who were suspected to have been involved in the allegations of selling posts, and even went out of its way by writing them letters. In as far as NATU is concerned, the suspects are the trade unions and officials of the department, so inviting them and not inviting teachers and other associated individuals to be part of the investigation was an act in futility and a good recipe for disaster. Circulars to trade unions were crafted and received by them but no invitation whatsoever was directly directed to the victims of these crimes, namely the teachers in all schools.

The report further states that selected professors were also formally invited to influence the process, but the task team never saw the need to mobilize teachers by

writing to them directly, either by way of circulars or any other means. Such invitations would have encouraged wider participation in the investigation. Certainly, this lack of participation must have severely limited and compromised the breadth and depth of this investigation.

### **Protection of Witnesses**

One of the important process issues we raised with the MTT related to the protection and support which was needed to be offered to witnesses. We strongly felt that such protection and support would have enhanced the credibility and trustworthiness of the findings – both during the course of the investigation and afterwards. It was with this in mind that NATU pointed out to the task team that it would be extremely important to inform all the teachers that it had the ability to provide security to all the witnesses. We felt that if the task team said nothing about the protection of witnesses the scale and scope of participation – and hence, the task team’s ability to obtain the information it sought to gather would be severely curtailed and compromised.

Indeed, in matter of this kind, the graver the misdeeds committed by the perpetrators, the greater the risks for the witnesses and victims to come forward publically and ‘spill the beans’. Thus, it was very clear to NATU that the protection of witnesses was the cornerstone of successful investigation by the MTT. However, as everyone knows, none of this advice was taken on board, as the MTT chose to discredit NATU by misleading the public that we boycotted their work. We want to reiterate the point that members of NATU remain ready to give evidence to a credible body investigating the said allegations and truly committed to the maintenance of the rule of law in our country’s education. NATU believes that one of the most powerful vehicles to link a perpetrator to a crime is the testimony of a reliable and credible witness, such as past insider within an organization or a friend. However, we equally remain convinced that without the necessary protection and support given to witnesses, the chances of this exercise yielding credible results are infinitesimal.

Admittedly, the MTT concedes in its report at page 16 about this as follows:

Furthermore in a variety of the cases the pervasive culture of fear and concerns about safety negatively impacted on the co-operation of the potential witnesses, resulting in them being reluctant or unwilling to commit themselves to statements/affidavits to assist the Task Team in its investigation.

Certainly, what the MTT terms “the pervasive culture of fear and concerns about safety” was a real problem which the MTT should have anticipated and, accordingly, taken steps to contain the situation. As it is, the MTT’s inability to render protection and security to potential witnesses definitely and seriously undermined the work of the task team. This has led to the MTT’s Recommendation 3, which would have been unnecessary had the task team handled things differently.

This realisation is further aggravated by the task team’s report at page 16 as follows:

The MTT soon became aware that there are many forms of irregular appointments. In many ways the cases reported here constitute only an indicative sample of irregularities but they nevertheless point to widespread practices of improper and unfair influence affecting the outcomes of the appointment of educators. In only a minority of cases are there numerous claims of money being paid to influence the outcome but there are claims and findings of improper influence of many different kinds.

Thus, the MTT admits that they only so much as just scratched the surface of the problem they were meant to have fully investigated.

## **USE OF FORENSIC AUDITORS**

NATU has noted from the MTT report that the process made use of forensic auditors in order to fully investigate the matters that the task team came across. Commendable as this effort may have been, its usefulness, relevance and effectiveness were dealt a fatal blow by the limited scale of participation of potential witnesses and the absence of clearly defined safeguards regarding the protection of witnesses. Thus, because many of the irregularities still remain unreported, we



believe that these forensic auditors did not even begin to scratch the surface of this iceberg.

### **A SHIFT FROM THE MAIN MANDATE**

We note from the report that the MTT placed a disproportionately huge emphasis on advising the Minister on how to improve the existing legislative provisions and policies related to appointment and placement of teachers. This appears to have clouded the main purpose of the establishment of the MTT – thereby suggesting that the MTT was never well vested with investigative or prosecutorial powers. Rather, their main interest became fixated on policy development and formulation, and not investigating the alleged corrupt practices that bedevilled the provincial education departments around the country. Furthermore, the mandate shift manifested itself in the evident strong emphasis of the investigation on some stakeholders' views about the current school-based recruitment and appointment procedures for filling vacant posts, as opposed to the real mandate given to the task team – that is, that of investigating the broad spectre of selling of public posts in the Department of Basic Education. Briefly stated, the mandate of the task team was “to inquire into and to report to the Minister on allegations reported in the media regarding the alleged irregular appointment of educators at schools and the role played by any union and by officials of provincial education departments in these alleged irregular appointments” (Department of Basic Education, 2014: 4). We believe that the MTT shifted substantially from this mandate.

### **OUR RECOMMENDATIONS GOING FORWARD**

It is a matter of grave concern that the MTT has found the Department of Basic Education (DBE) not to have full control of its mandate in all provinces (Recommendations 4 and 5), suggesting that there has been a dereliction of duty and responsibility on its part. Furthermore, owing to the MTT report's inconclusiveness, mainly due to a weak methodology in its discharge of its mandate, NATU proffers as follows:



## 1. URGENT NEED FOR THE ESTABLISHMENT OF THE JUDICIAL COMMISSION OF ENQUIRY

That the Minister of Basic Education must request the President of the Republic of South Africa to appoint a commission of Enquiry for the purpose of making an enquiry into this definite matter of public interest.

That a proper investigation of the allegations of malpractices in the appointments and recruitment of teachers be conducted by a properly constituted Judicial Commission of Enquiry in terms of the Commission Act and section 84 of the South African Constitution.

The Judicial Commission of Enquiry is the only feasible manner to investigate a selling of posts and the public confidence is undeniably high when such a commission is established as opposed to an ordinary Ministerial Task Team. The Judicial Commission has certain powers not often available to other investigators such powers to compel witnesses to testify while ensuring their protection from possible harassment or intimidation.

## 2. URGENT NEED FOR A POLICY SHIFT

That the government's policy of **cadre-deployment** be retracted in order to ensure that all citizens of the Republic of South Africa are afforded an equal and fair chance of securing employment in the country of their birth. In this regard, NATU notes the MTT's remark at page 17 of its report that DBE lacks appointment and recruitment practices that "acknowledge the critical nature of acquiring competent professionals" through the application and use of special tools and processes "to give credibility and validity to the process." A big part of the absence of proper recruitment modalities which follow standard recruitment principles is attributable to the government policy of cadre deployment.

Certainly, to the extent that many of the personnel that are appointed through this policy lack the critical and necessary skills and competencies for the posts to which they are deployed means that this policy is inconsistent with standard recruitment principles. As such, it really has no place in the recruitment and

appointment of professionals. Thus, NATU calls for the immediate scrapping of this policy in-so-far as the recruitment of teachers and other educators is concerned.

This means that what is needed is **systemic transformation**, and not a mere scraping at the surface of the problem, like the MTT did in attempting to investigate the reported irregularities in the recruitment and appointment of teachers within the DBE.

### 3. **INTERIM ALTERNATIVE APPOINTMENT AND RECRUITMENT PROCEDURES AND PROCESSES,**

In view of the MTT's observation that some School Governing Bodies (SGBs) are "dysfunctional" – thereby casting doubt on "the validity of staff selection" (p. 17 of report), therefore that provision be made for **interim alternative appointment and recruitment procedures and processes**, while the current legislation (i.e. School's Act) is reviewed to provide for alternative mechanisms / frameworks for the appointment and recruitment function of teachers by SGBs. Certainly, there is a dire need for alternative appointment and recruitment procedures and processes in cases where SGB dysfunctionality obtains, and where SGBs lack the necessary levels of competence to discharge their duties diligently and in line with standard recruitment principles.

Neutral or independent bodies with 50% members of the SGB may be used to achieve this, while trade unions serve as observers on such structures.

### 4. **WITHHOLD NAMES OF PERSONS FROM THE MTT REPORT BEFORE IT IS RELEASED**

Given that the MTT failed to offer protection to witnesses, that the names of witnesses be deleted from the MTT report before it is released. This will result in the reduction of deaths among the brave and selfless witnesses who heeded the task team's call to assist it in its investigations.

## **CONCLUSION**

The reality is that, despite the magnitude of the allegations that the MTT set out to investigate, methodologically and the cagey process that the task team followed seriously compromised its work. No doubt that the selling of posts as alleged, and the scale of it, amounted to a very serious public sector crisis, and had an immense negative impact on public confidence vis-à-vis our country's education system. In view of this that NATU believes that delivering such a hotchpotch investigation, as the MTT has done, has amounted to nothing but a denial of access to justice for many victims of this scam. Certainly, had the task team developed clear safeguards to ensure the protection of both whistle blowers and potential witnesses from possible harassment, intimidation or even death, many more people (teachers and others, alike) would have participated in the process. In turn this would have validated and legitimised the outcomes of this investigation and given it the much needed credibility and trustworthiness. It is unfortunate that all the above mentioned information that was shared during NATU's interaction with the MTT was simply and easily dismissed in one phrase – that is, that “NATU refused to participate.” The obvious question is, why did the task team decide to hide these important contributions that were made by NATU on behalf of so many teachers whom the union represents? To us, this shows bad faith, ill will and hostility towards NATU by the MTT.

Overall, NATU is still convinced that the fear of reprisals acted as a very powerful deterrent in preventing many potential witnesses from coming forward to testify. It was for this reason that NATU unequivocally emphasized to the MTT that if potential witnesses were not offered any protection and the necessary support, it was unlikely that they would put their lives or well-being at risk by incriminating criminal suspects who had everything to lose if found guilty.

**From The NATU Executive Director: S.A Thompson**

## **REFERENCE**

Department of Basic Education (2014). *Government Gazette*, Vol. 592 Pretoria, No. 38144. Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001